

HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID LAHOTI, an individual,

Plaintiff/Counterclaim
Defendant,

v.

VERICHECK, INC., a Georgia corporation,

Defendant/Counterclaim
Plaintiff.

Case No.: C06-1132JLR

ANSWER AND COUNTERCLAIMS

Defendant and Counterclaim Plaintiff Vericheck, Inc., as and for its Answer to Plaintiff David Lahoti's Complaint and for its Counterclaims states as follows:

ANSWER

I. NATURE OF THE CASE

1. Vericheck admits that Lahoti purports to allege a claim for declaratory relief pursuant to 28 U.S.C. § 2201 that his registration and use of the domain name <vericheck.com> (the "Domain Name") does not violate Vericheck's trademark rights under the Lanham Act. Other than as explicitly stated, Vericheck denies the remaining allegations of paragraph 1 of the Complaint.

1 2. Paragraph 2 of the Complaint does not contain any allegations that require a
2 response. To the extent, if any, that paragraph 2 includes any allegations requiring a response,
3 Vericheck denies all allegations contained therein.

4 **II. JURISDICTION AND VENUE**

5 3. Vericheck admits that Plaintiff purports to invoke the jurisdiction of this Court.
6 Other than as explicitly stated, Vericheck denies the remaining allegations of paragraph 3 of the
7 Complaint.

8 4. Vericheck admits the allegations of paragraph 4 of the Complaint.

9 5. Vericheck admits the allegations of paragraph 5 of the Complaint.

10 **III. PARTIES**

11 6. Vericheck is without knowledge and information sufficient to form a belief as to
12 the truth or falsity of the allegations of paragraph 6 of the Complaint, and on that basis denies
13 them.

14 7. Vericheck is without knowledge and information sufficient to form a belief as to
15 the truth or falsity of the allegations of paragraph 7 of the Complaint, and on that basis denies
16 them.

17 8. Vericheck admits the allegations of paragraph 8 of the Complaint.

18 **IV. FACTS**

19 9. Vericheck admits that the Domain Name appears to have been registered in
20 March 2003 to an unidentified registrant designated as "Admin Manager." Except as explicitly
21 stated, Vericheck is without knowledge and information sufficient to form a belief as to the truth
22 or falsity of the allegations of paragraph 9 of the Complaint, and on that basis denies them.

23 10. Vericheck admits that the Domain Name was registered with the domain name
24 registrar Enom, Inc., which registrar has offices in Bellevue, Washington. Except as explicitly
25 stated, Vericheck is without knowledge and information sufficient to form a belief as to the truth
26 or falsity of the allegations of paragraph 9 of the Complaint, and on that basis denies them.

27 11. Vericheck denies the allegations of paragraph 11 of the Complaint.

12. Vericheck admits the allegations of paragraph 12 of the Complaint.

13. Vericheck admits the allegations of paragraph 13 of the Complaint.

14. Vericheck admits that the PTO initially rejected Vericheck's application to register the mark VERICHECK, INC. ELECTRONIC VERIFICATION NETWORK on grounds including a prior registration for the mark VERICHECK. Except as explicitly stated, Vericheck denies the allegations of paragraph 14 of the Complaint.

15. Vericheck admits the allegations of paragraph 15 of the Complaint.

16. Vericheck admits the allegations of paragraph 16 of the Complaint.

17. Vericheck admits the allegations of paragraph 17 of the Complaint.

18. Vericheck denies the allegations of paragraph 18 of the Complaint.

19. Vericheck denies the allegations of paragraph 19 of the Complaint.

20. Vericheck denies the allegations of paragraph 20 of the Complaint.

21. Vericheck denies the allegations of paragraph 21 of the Complaint.

22. Vericheck admits the allegations of paragraph 22 of the Complaint.

23. Vericheck admits the allegations of paragraph 23 of the Complaint.

24. Vericheck admits the allegations of paragraph 24 of the Complaint.

25. Vericheck admits that the Uniform Dispute Resolution Policy ("UDRP") provides for the "independent resolution" of the parties' domain name dispute by the courts. Except as explicitly stated, Vericheck denies the allegations of paragraph 25 of the Complaint.

26. Vericheck admits that Plaintiff commenced this lawsuit within ten days after the decision of the National Arbitration Forum panel which ordered transfer of the Domain Name to Vericheck. Except as explicitly stated, Vericheck denies the allegations of paragraph 26 of the Complaint.

**V. FIRST CAUSE OF ACTION
DECLARATORY RELIEF - 28 U.S.C. § 2201
PLAINTIFF ASSERTS NO VIOLATION OF ACPA**

27. Vericheck realleges and incorporates by reference its responses to the allegations of paragraphs 1 through 26 of the Complaint as if fully set forth herein.

28. Vericheck admits that Plaintiff purports to allege that there is an actual controversy with respect to whether it is required to transfer the subject Domain Name to Defendant as ordered by the UDRP decision. Except as explicitly stated, Vericheck denies the allegations of paragraph 28 of the Complaint.

29. Vericheck denies the allegations of paragraph 29 of the Complaint.

30. Vericheck denies the allegations of paragraph 30 of the Complaint.

31. Vericheck denies the allegations of paragraph 31 of the Complaint.

32. Vericheck denies the allegations of paragraph 32 of the Complaint.

33. Vericheck denies the allegations of paragraph 33 of the Complaint.

**VI. SECOND CAUSE OF ACTION
DECLARATORY RELIEF - 28 U.S.C. § 2201
PLAINTIFF ASSERTS NO VIOLATION OF LANHAM ACT**

34. Vericheck realleges and incorporates by reference its responses to the allegations of paragraphs 1 through 33 of the Complaint as if fully set forth herein.

35. Vericheck admits that Plaintiff purports to allege that there is an actual controversy with respect to whether it is required to transfer the subject Domain Name to Defendant because of Vericheck's prior rights in the VERICHECK Mark. Except as explicitly stated, Vericheck denies the allegations of the allegations of paragraph 35 of the Complaint.

36. Vericheck denies the allegations of paragraph 36 of the Complaint.

37. Vericheck denies the allegations of paragraph 37 of the Complaint.

38. Vericheck denies the allegations of paragraph 38 of the Complaint.

39. Vericheck denies the allegations of paragraph 39 of the Complaint.

VII. RELIEF REQUESTED BY PLAINTIFF

40. Vericheck avers that the WHEREFORE paragraphs 1-6 and their respective subparts, which appear after paragraph 39 of the Complaint, do not contain any allegations that require a response. To the extent, if any, that such paragraphs include any allegations requiring a response Vericheck denies them.

VERICHECK'S COUNTERCLAIMS

Defendant and Counterclaim Plaintiff, Vericheck, Inc., as and for its Counterclaims against Plaintiff for cybersquatting, trademark infringement and unfair competition, and violation of Washington's Consumer Protection Act, asserts the following:

I. FACTS

A. Vericheck Owns Trademark Rights In The VERICHECK Mark, Which Rights Predate Plaintiff's Registration of the VERICHECK.COM Domain Name

1. Vericheck is a leading provider of transaction processing services. For seventeen years, from 1989 to the present, Vericheck has continuously used the "VERICHECK" name and mark (the "The Mark") in connection with check collection, verification and processing services. Vericheck also provides other financial verification services. Vericheck is well known on the Internet as a recognized and trusted provider of check verification services and has maintained an Internet presence for this purpose since 1999. Vericheck has maintained a website using the "VERICHECK" name since 2000. An excerpt from the <www.vericheck.net> website is attached as Exhibit A.

2. Vericheck received service mark registration S-19547 from the State of Georgia on August 31, 2001 for the VERICHECK Mark and associated design. A printout of the status of Vericheck's Georgia trademark registration taken from the Georgia Secretary of State Office database is attached hereto as Exhibit B.

3. Vericheck has devoted substantial capital and corporate resources to associate the VERICHECK Mark with its services and increase public awareness of the VERICHECK Mark. Over the years, Vericheck has spent over \$85,000 to market products and services associated with the VERICHECK Mark, with sales doubling every year. Using the VERICHECK Mark, the dollar amount of financial transactions processed by Vericheck has grown from \$100,000 in all of 1989 to over \$1.2 million per month in December 2005. Vericheck's current customers represent a veritable "who's who" of Internet payment processors ranging from Humboldt Bank to USA e-pay, two leading Internet payment companies.

4. As a result of Verichex's substantial use and investment, the VERICHECK Mark is well-known and is recognized by the relevant consumers as indicating Verichex and its services. The VERICHECK Mark has become distinctive of Verichex and its services.

B. Plaintiff is a Known Cybersquatter Who Registered the Domain Name With Full Knowledge of Plaintiff's Prior Rights.

5. Verichex's use of the VERICHECK Mark and of the <verichex.net> Domain Name long predates the registration or any use by Plaintiff of the Domain Name that is the subject of this proceeding.

6. The VERICHECK Mark was distinctive and well known among the relevant consuming public as indicating Verichex and its services long prior to Plaintiff's registration of the subject Domain Name. The subject Domain Name was registered by Plaintiff in March 2003. Verichex has continuously used the VERICHECK name and Mark in connection with its services since 1989 and has maintained a website using the "VERICHECK" name (<www.verichex.net>) since 2000.

7. Plaintiff is engaged in a pattern and practice of cybersquatting for purposes of financial gain. Verichex has reviewed over 900 of Plaintiff's websites. A large number of these sites are located at domain names that use famous marks or variations thereof. These domain names include "cinnabun" (misspelling of "cinnabon"), "comcastsport" (contraction of "Comcast sports"), "e-faxes" (derivation of "e-fax"), "ebayworld" (derivation of "ebay"), "freiling" (misspelling of "frieling"), "imax" (which appears to be in the process of transfer to the mark owner), "itunesphones" (derivation of "itunes"), "lener" (misspelling of "lerner"), "optivity," and "oreos." Plaintiff has also registered domain names related to marks, or derivations of marks, associated with prominent businesses or individuals: "Danielhill.com" (Daniel Hill is a prominent Christian author who has published several books); and "pnconsulting" ("PN Consulting" is the trade name of the consulting group of "Porter Novelli").

8. Plaintiff is not generally known by the names "verichex" or "verichex.com" and has no legitimate rights in the VERICHECK Mark. Upon information and belief, Plaintiff

1 registered the <verichack.com> Domain Name for the purpose of taking advantage of the
2 goodwill inherent in Verichack's VERICHECK Mark and for the purpose of driving traffic to
3 Plaintiff's website in order to generate advertising revenue.

4 9. The subject Domain Name incorporates, in its entirety, the VERICHECK Mark.

5 10. Plaintiff uses the Domain Name <verichack.com> to direct customers to its faux
6 web portal that appears to exist solely to market the services and products of Defendant's
7 competitors and generate click through revenue. When an Internet user visits Plaintiff's site, he
8 finds a site appearing to offer up search results. However when a user clicks on these results, it
9 appears that Plaintiff redirects the user to the search portal <information.com> while continuing
10 to use the VERICHECK Mark, or a derivation of the Mark, on its web pages. This search
11 request generates links to web pages of Defendant's competitors. Excerpt web pages from
12 Plaintiff's <www.verichack.com> website are attached as Exhibit C.

13 11. Consumers are likely to be confused by Plaintiff's use of the <verichack.com>
14 Domain Name into believing that there is an association or affiliation between Plaintiff and its
15 website and Verichack and its services.

16 12. Since purchasing the Domain Name, Plaintiff has indicated that it would sell the
17 Domain Name to Verichack, but only for an exorbitant sum. In August 2005 Plaintiff was
18 willing to sell the Domain Name for \$48,000. By January 2006, the price stated by Plaintiff
19 increased to over \$100,000. The Domain Name remains "for sale" on <sedo.com>.

20 **COUNTERCLAIM I**
21 **CYBERSQUATTING (15 U.S.C. §1125)**

22 13. Defendant realleges and incorporates by reference the allegations contained in
23 paragraphs 1 through 12 of Verichack's Counterclaims.

24 14. The Verichack Mark was well known and distinctive before Plaintiff's
25 registration of the <verichack.com> Domain Name in March 2003.

26 15. Plaintiff has used the <verichack.com> Domain Name with a bad faith intent to
27 profit from Verichack's Mark, pursuant to 15 U.S.C. §1125(d).

1 16. Plaintiff has registered, and is trafficking in and using the <verichack.com>
2 Domain Name, which is identical to, confusingly similar to and/or dilutive of the VERICHECK
3 Mark.

4 17. The use by the Plaintiff of the Domain Name <verichack.com> is likely to cause
5 confusion among consumers as to the source or sponsorship of Plaintiff's website and its
6 products and/or services.

7 18. The Plaintiff has engaged in and continues to engage in these activities
8 knowingly, willfully and deliberately, so as to justify an award of Verichack's attorneys' fees.

9 19. The Plaintiff's actions justify an award of statutory damages in the amount of
10 \$100,000.

11 20. The Plaintiff's acts of cyberpiracy, unless enjoined by this Court, will continue to
12 cause Verichack to sustain irreparable damage, loss and injury, for which Verichack has no
13 adequate remedy at law.

14 **COUNTERCLAIM II**
15 **FALSE DESIGNATION OF ORIGIN AND FALSE REPRESENTATION**
16 **(15 U.S.C. § 1125(a))**

17 21. Defendant realleges and incorporates by reference herein the allegations
18 contained in paragraphs 1 through 20 of Verichack's Counterclaims.

19 22. The Plaintiff's aforesaid activities, including its continued use of the
20 <verichack.com> Domain Name, constitute false designation of origin, false descriptions and
21 representations and false advertising in commerce in violation of § 43(a) of the Lanham Act, 15
22 U.S.C. § 1125(a), because they are likely to mislead the trade and public into believing that
23 Plaintiff's products and/or services originate from, are affiliated with, or are sponsored,
24 authorized, approved or sanctioned by Verichack.

25 23. The Plaintiff has engaged and continues to engage in these activities knowingly,
26 willfully and deliberately.
27

32. The Plaintiff's aforesaid activities including its continued use of the <verichack.com> Domain Name constitute unfair competition with Defendant by creating a likelihood of confusion as to the source or sponsorship of the products and/or services offered by the Plaintiff and by misappropriating the unique reputation and good will of Verichack thereby injuring that reputation and goodwill, and diverting from Verichack the benefits arising there from.

33. The Plaintiff has engaged and continues to engage in these activities knowingly, willfully and deliberately.

34. The Plaintiff's aforesaid acts of unfair competition, unless enjoined by this Court, will continue to cause Verichack to sustain irreparable damage, loss and injury, for which Verichack has no adequate remedy at law.

**CLAIM V
VIOLATION OF WASHINGTON STATE CONSUMER PROTECTION ACT
(RCW 19.86.020)**

35. Defendant realleges and incorporates by reference the allegations contained in paragraphs 1 through 34 of Verichack's Counterclaims.

36. The Plaintiff's conduct complained of herein is an unfair act or practice that has the capacity to deceive consumers into believing they are receiving products or services from Verichack when this is not the case. This implicates the public interest.

37. All the conduct alleged herein occurs and continues to occur in the course of Plaintiff's business. The conduct is part of a pattern or generalized course of conduct repeated on numerous occasions daily.

38. The Plaintiff has engaged and continues to engage in these activities knowingly, willfully and deliberately.

39. Verichack has been directly and proximately injured in its business and property by the Plaintiff's conduct complained of herein in violation of Verichack's rights under RCW 19.86.020.

40. Pursuant to RCW 19.86.090, Vericheck is entitled to its attorneys' fees and costs of suit, in amounts to be determined at trial.

41. The Plaintiff's aforesaid acts, unless enjoined by this Court, will continue to cause Vericheck to sustain irreparable damage, loss and injury, for which Vericheck has no adequate remedy at law.

II. PRAYER FOR RELIEF

WHEREFORE, Vericheck, Inc. requests entry of a judgment and Order in its favor and against Plaintiff on all claims as follows:

1. Restraining the Plaintiff from selling or otherwise transferring the Domain Name <verichack.com> to any third party other than Verichack, Inc.;

2. Ordering that the Domain Name <verichack.com> be transferred to Verichack, Inc., and that the Plaintiff take all necessary actions to transfer the Domain Name <verichack.com> to Verichack within ten (10) days of entry of such Order;

3. Restraining the Plaintiff from using in connection with its activities, products or services any false or deceptive designation, representation or description of the Plaintiff or of its products, services or activities, whether by symbols, words or statements, which would damage or injure VeriCheck or give the Plaintiff an unfair competitive advantage in the marketplace;

4. Restraining the Plaintiff from engaging in acts of federal, state or common law trade name infringement, trademark infringement, service mark infringement, unfair competition or misappropriation which would damage or injure Verichex;

5. Restraining the Plaintiff from violating RCW 19.86.020;

6. Restraining the Plaintiff from inducing, encouraging, instigating, aiding, abetting or contributing to any of the aforesaid acts;

7. For an award to Verichex of statutory damages of \$100,000 pursuant to 15 U.S.C. 1117(d);

1 8. That Vericheck be awarded the costs of this civil action, together with Vericheck's
2 reasonable attorney fees, pursuant to 15 U.S.C. § 1117, RCW 19.77.150, RCW 19.86.080, and
3 the equity powers of the Court;

4 9. That Plaintiff be ordered to pay Vericheck prejudgment interest on all sums allowed
5 by law;

6 10. That Vericheck be awarded such other and further relief as the Court may deem
7 equitable and proper.

8 DATED this 29th day of August, 2006.

9 STOKES LAWRENCE, P.S.

10
11 By: Shannon M. Jost
12 Shannon M. Jost (WSBA #32511)
13 Attorneys for Defendant/Counterclaim
14 Plaintiff VERICHECK, INC.
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CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2006, I caused the foregoing Answer and Counterclaim to be:

☒ electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

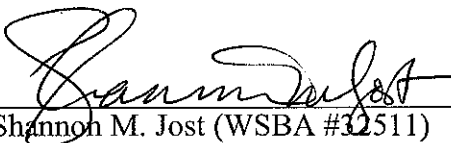
Derek A. Newman (derek@newmanlaw.com)
Randall Moeller (randy@nemanlaw.com)

☐ mailed by first class United States mail, postage prepaid, to the following:

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Shannon M. Jost (WSBA #32511)
Attorneys for Defendant/Counterclaim Plaintiff
Stokes Lawrence, P.S.
800 Fifth Avenue, Suite 4000
Seattle, WA 98104
(206) 626-6000
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Exhibit A



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Collection Services

VeriCheck, Inc. has been in business for over 10 years, helping businesses throughout the **US** in the prevention of receiving and the recovery of their money from returned checks. With VeriCheck, merchants are receiving a 65% collection rate on the **"FIRST"** re-presentment. In addition, we return a portion of the NSF fees directly to you!

At VeriCheck, we realize that your customers are the key to your success. Our recovery staff members are specialists in customer relations. We take a positive approach to debt recovery and search for solutions that will keep your good customers coming back in the future.

VeriCheck eliminates the 60-90 day period for you to receive money for your returned checks. With VeriCheck, you can have your money back in your hands typically in 16-31 days! Plus, you will get extra cash back on every item collected through VeriCheck. Recent change in the law allows us to electronically access a check writer's account and debit not only the face value of the check, but also the NSF fees associated with the transaction. This allows us to get the money back in your hands, where it belongs, in less time than ever before ...

All of this is provided **at no additional cost to you!!!** When considering VeriCheck, remember:

1. 65% collection rate on first time collection items
2. 16-31 day collection cycle from date of check deposit to item reimbursement
3. NO additional fees and **NO CHARGE** for Electronic Check Verification Services for customers with Debit/Credit Card Service
4. Low Cost Check Guarantee Option available with VeriCheck's Standard Dial-In Verification Service
5. Support a wide variety of Check Scanners and Readers
6. You will be accessing a database specifically maintained for your business and geographic location for electronic check verification. This eliminates the ability for the bad-check criminal to repeatedly target your locations in a two or three day period
7. NO CHARGE for check collection on checks presented within 30 days of their return to you

VeriCheck is designed to prevent losses at the time of check presentment and collect on NSF checks presented to you. Closed accounts, Forgeries, Stop Payments, etc, will be handled using conventional collection techniques and "criminal prosecution" when applicable. Together we can reduce your company's operating expenses and increase your company's **bottom line** therefore achieving the "**WIN WIN**" results that you need to manage that line of your business.





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The Security of Check Verification

How Check Verification Works:

For both POS and Online Checks (Internet originated) VeriCheck verifies the bank routing number, account numbers along with the consumer information against a positive and negative database to ensure the check writer does not have unresolved returned checks.

Negative Database: Verifies the bank account number is not in a fraudulent or bad account database

Positive Database: Verifies the consumer and bank account through a successful check transaction database

Consumer Database: Verifies the consumer is not on a "who's who" of bad check writers

In the U.S. slightly more than 2% of checks written to retail businesses, and 1% of checks overall are returned unpaid. Recovery rates vary, but, on average, Merchants ultimately recover less than half of these items. Much of this money is readily recoverable by VeriCheck's electronic NSF recovery services. Included in our check verification service is this check recovery system. This service eliminates you, the merchant, from having to try and collect on a returned check. VeriCheck will pursue recovery of the check to the fullest extent of the law at **no additional cost to the you.**

VeriCheck's prevention system is as strong as its recovery service. Our database enables you to track a combination of variables providing a number of ways to decrease your exposure to the intentional bad check writer. A few variables include:

- The number of checks written within a specified period of time

- The total dollar amount of checks written within a time period
- or a combination of both.

VeriCheck services gives you the power to decide whether or not to accept a particular check.

- Merchant controlled risk parameters.
- Eliminate in-house collection of returned checks - VeriCheck check recovery system will collect the returned check for you.
- Reduce the amount of returned checks.
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VeriCheck, Inc. services all major types of consumer and business payments such as: Check Acceptance (ACH); eChecks; credit (Visa?, MasterCard?, American Express?, Diners Club?, Discover?/NOVUS?); online debit, offline debit; Electronic Benefits Transfer (EBT); wireless; stored value and purchasing cards.

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Your Search Criteria:

Mark Name: Vericheck

Search Results

Information current as of 6/14/2006 11:25:49 AM

Records 1 - 1 of 1 Total Records Found

Mark Name:	VERICHECK & DESIGN
Mark Type:	SERVICE MARK
Registration No.:	S-19547
Registration Date:	8/31/2001
Expiration Date:	8/31/2011 (ACTIVE)
First used by an Individual:	1989
First used in Georgia:	1989
Owner of Mark:	VERICHECK, INC., 1815 WOODCLIFFE TROMRACK NE, ATLANTA, GA 30324
Classification:	3 - Insurance and financial
Mark used in connection with:	CHECK VERIFICATION AND CHECK COLLECTION SERVICES.
Description:	A DEPICTION OF A CHECK MARK OVER THE WORD "VERICHECK"

New Search

Exhibit B

Verichack.com*What you need, when you need it*

August 29, 2006

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Exhibit C

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